(3)

IN THE HIGH COURT OF JUDICATURE

AT BILASPUR CHHATTISGARH

W.P. 2323 **/2002**

PETITIONER : DHANANJAY NIRMALKAR AGED 55 years Son of Shri Bisambhar Nirmalkar Labourer of Mahanadi Searsh Jal Prabhand Sub-Division I, Rudri, Tahsil & District Dhamtari, Resident of Village & Post Kandel Tahsil and District Dhamtari Chhattisgarh.

VERSUS

RESPONDENTS : 1. **STATE OF CHHATTISGARH** Through Secretary Department of Water Resources DSK Bhawan Mantralay, Raipur Chhattisgarh.

2. **EXECUTIVE ENGINEER** Mahanadi Jal Prabandh Dam Division II, Rudri, Tahsil & District Dhamtari Chhattisgarh.

3. **SUB-DIVISIONAL OFFICER** Mahanadi Searsh Jal Prabandh Sub-Division I, Rudri, Tahsil & District Dhamtari Chhattisgarh.

P. R. No. ..... Raipur
Presented by Shri ..... Deepak Swamy
dated 4.4.2002

WRIT PETITION UNDER ARTICLE 226

OF THE CONSTITUTION OF INDIA

FOR ISSUANCE OF WRITS / ORDERS / DIRECTIONS ETC.

XI-HC– 78

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W. P. No. 2323/2002 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

29-9-2004

Petitioners through their respective counsel.

State by Shri V.V.S. Murthy, Dy. Advocate General.

Heard.

2. This batch of cases relate to Gangman, Chokidar etc. of the Water Resources Department. Since the question involved in all the petitions is similar, they are being decided by this common order.

3. Counsel for petitioner submits that P.W.D. Manual, Volume 1 Chapter iv deals with Accounts of Works and Stores. Para 4.003 deals with Registration and Payment of Daily Casual Labour/Regular Labour Gangs. Para 4.003 reads thus:-

> 4.003(A) Casual Labour Gangs- When work is to be done by daily casual labour gangs, the subordinate incharge shall prepare a muster roll, which will show the names of the work-people, their attendance, the work done and the amount payable on this account. Monthly muster rolls if necessary, may be closed after seven days or as convenient.
>
> (B) Permanent Gangs-
>
> (a) … … …
>
> (b) … … …
>
> (c) … … …
>
> (d) … … …
>
> (e) Any recruitment to regular gangs will be done only with the permission of S.E. Labourers more than 58 years of age shall not be employed/continued in regular gangs."

XI-HC—78

(34)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P-2323/2002 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

4. It is submitted that there is no change in the Manual. He further submitted that by a notification, manual cannot be superseded.

5. Counsel for petitioner submitted that the as per annexure P-2 (W.P. No. 2044/2004), the Additional Secretary vide letter dated 9-3-2000 bearing no. F/13/11/S/2000 has issued direction that the daily wage employees/labours should not be allowed to work on attaining more than 55 years of age. In reference to the above letter, the Government has clarified the category of the employees vide its letter dated 3-7-2000 bearing no. F/13/11/31/Sa/2000 as per Annexure P-3 that the employees who should not be allowed to work after 55 years are 1. Chokidar (2) Labour (unskilled), (3) Helper (unskilled), (4) Civil (5) Mali (6) Khalasi (7) Gangman and (8) Process Surveyor. In the letter, it was made clear that the order under reference will not be applied on other daily wage employees and they may be kept in service till 60 years of age. Counsel for petitioner submitted that it is discrimination. He placed reliance on a decision in Union of India and another –v- International Trading Co. Ltd. and another reported in 2003 (5) SCC 437 and State of Orissa and others –v- Titaghur Paper Mills reported in AIR 1985 SC 1293. During the Course of hearing, the decision of High Court of M.P. in W.P. No. 3200/2003 (State of Madhya Pradesh and others –v- Smt. Bhagwati Bai and another) dated 23-3-2003 was also brought to the notice of this Court.

6. Counsel for petitioner further submitted that, the State Government issued another direction vide letter dated 17-4-2000 as per Annexure P-4 and issued directions that the orders directing retirement of employees of Water

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(35

मामला क्रमांक W.P- 2323/2002 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Resources Department attaining the age of 55 years, are cancelled. He further submitted that Department has not been fair in removing the employees. He submitted that they have been removed pursuant to notification dated 9-3-2000 (Annexure P-2) and subsequent notification dated 17-4-2000 and 3-7-2000 have not been considered. There is not a whisper in the order.

7. Learned Dy. Advocate General brought to the notice of the Court the decision taken by the State on 16-8-2004 vide letter bearing no. F 14-53/ स्था. /31/2004 whereby the age in the Water Resources Department has been kept as 60 years. The letter dated 16-8-2004 is quoted below:-

"विषयः— दैनिक वेतन भोगी कर्मचारियों/श्रमिकों की सेवा अवधि के संबंध में ।

संदर्भः— अवर सचिव, म.प्र. शासन, जल संसाधन विभाग, मंत्रालय, वल्लभ भवन, भोपाल क्रमांक एफ3 —11/31/ सा / 2000,दिनांक 09.03. 2000.

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उपरोक्त विषय में कृपया संदर्भित पत्र का अवलोकन करने का कष्ट करें, जिसमें लेख है कि दैनिक वेतन भोगी कर्मचारियों कि सेवानिवृत्ति के लिए अधिकतम आयु सीमा निर्धारित नहीं होती है । दैनिक वेतन भोगी कर्मचारी/श्रमिको को मेहनत के कार्य पर लगाया जाता तथा उसकी मेहनत के अनुसार उन्हे मजदूरी देय होती है । सभी श्रमिक शारीरिक श्रम के आधार पर काम बने रहते है । सामान्यतः 55 वर्ष की आयु से अधिक के ऐसे श्रमिक शारीरिक काम करने के योग्य नही होने के कारण इस श्रेणी के व्यक्तियों को 55 वर्ष की आयु के बाद काम पर नही रखने के निर्देश दिये गये थे ।

XI-HC– 78

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P- 2323/2002 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

राज्य शासन द्वारा विचारोपरान्त निर्णय लिया गया है कि जल संसाधन विभाग में आयु सीमा 60 वर्ष पूर्ववत रखी जाये । अतः उपरोक्तानुसार कार्यवाही करें एवं की गई कार्यवाही से शासन को तत्काल अवगत करावें ।"

8. Counsel for the petitioner submitted that inspite of this decision of the State Government dated 16-8-2004, the department has not taken any step. In last para of the above order, the State Government has decided that in the Public Works Department, the age of superannuation be kept 60 years as it was earlier and after taking steps, the State Government be informed immediately. The contention is that now the State Government has taken decision and in spite of the decision, they are not implementing the same.

9. In view of the order dated 16-8-2004, the Department ought to have taken steps and orders are required to be passed by the Department. Let the orders be passed in accordance with the order dated 16-8-2004. It is further directed that till orders are passed, the petitioners be allowed to continue.

10. Subject to directions and observations made above, the petitions stand disposed of. Consequently all the pending M.W.Ps. and I.As. also stand disposed of.

11. A copy of this Court be placed in all the connected matters.

Sd/-
Fakhruddin
Judge

Pathak/-